



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Towing and Recovery Operators
Virginia Administrative Code (VAC) citation	24 VAC 27 - 10 - 10 et seq.
Regulation title	Public Participation Guidelines
Action title	Establishment of Public Participation Guideline Regulations
Date this document prepared	February 13, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Board intends to establish new public participation guideline regulation for the Virginia board for Towing and Recovery Operators. The Virginia Board for Towing and Recovery Operators was established by enactment of legislation (SB134 and HB1258) of the General Assembly and Governor of Virginia during the 2006 session. The Board went into effect July 1, 2006. Licensure, regulation, and enforcement of standards of practice are to go into effect on July 1, 2008.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Virginia Board for Towing and Recovery Operators voted unanimously at its January 23, 2007 board meeting to adopt final regulation for the establishment of Public Participation Guideline Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 28 of Title 46.2 of the Code of Virginia. Section 46.2-2809 establishes the authority of the Board to promulgate regulations:

§ 46.2-2809. Regulations

The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of provisions of this chapter, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each licensee 30 days prior to its effective date.

(2006, cc. 874, 891.)

The statutory authority for licensure and regulation of towing and recovery operators is found in Chapter 28 of Title 46.2 of the Code of Virginia:

§ 46.2-2805 General Powers of duties of Board

The powers and duties of the Board shall include, but not be limited to the following:

- 1. To establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;*
- 2. To examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration, and grading of examinations;*
- 3. To license qualified applicants as Class A or Class B operators;*
- 4. To levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board;*
- 5. To levy on licensees special assessments necessary to cover expenses of the Board;*
- 6. To revoke, suspend, or fail to renew a license for violation of this chapter or enumerated in regulations promulgated by the Board;*
- 7. To receive complaints concerning the conduct of persons and businesses licensed by the Board and to take appropriate disciplinary action if warranted;*
- 8. To enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board;*

9. To establish committees of the Board, appoint persons to such committees, and to promulgate regulations establishing the responsibilities of these committees;

10. To establish means and procedures by which members or employees of the Board may attempt to mediate and resolve in an expedited manner, complaints filed against those licensed or otherwise regulated by the Board; and

11. To do all things necessary and convenient for carrying into effect provisions of this chapter or regulations promulgated by the Board.

(2006, cc. 874, 891.)

The specific statutory mandate for guidelines for public participation in the regulatory process is found in the subsection D of § 2.2- 4007:

§ 2.2-4007. Notice of intended regulatory action; public participation; informational proceedings; effect of noncompliance.

D. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Virginia Board for Towing and Recovery Operators was established by enactment of legislation (SB134 and HB1258) of the General Assembly and Governor of Virginia during the 2006 session. The Board went into effect July 1, 2006. Licensure, regulation, and enforcement of standards of practice are to go into effect on July 1, 2008. As such public participation guideline regulations for the board do not exist. Absent of these regulations the board has no set guidelines outside of the Code of Virginia that allows for public participation in the promulgation of regulation.

Section 2.2-4007 of the Code of Virginia specifies that “Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provision of this chapter.” By proposing these regulations the board is aiming to institute a mechanism by which to comply with § 2.2-4007.

This regulation is essential to protect the health, safety, or welfare of citizens of the Commonwealth in that it provides a venue for participation of promulgation of regulation by users of, professionals in, and those interested in the towing and recovery profession in the Commonwealth. Further, these regulations seek to expand participation by providing for electronic exchange with the public and thereby increase participation, reduce cost of doing so, and improving the speed of communication. Diverse participation in the promulgation of regulation allows for final product that more consistently represents the ideas, beliefs, and norms of the citizens of the Commonwealth.

The major problem facing the board at this point is that there are no regulation regarding public participation guidelines. This proposal is intended to rectify that situation in an acceptable manner relatively quickly.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The board is proposing the use of the fast track process to promulgate this regulation for the following reason.

This board needs to have regulations in place July 1, 2008 in order to license persons engaged in business in the Commonwealth as a towing and recovery operator as a Class A or Class B operator as set out in § 46.2-2812 (Licenses required) of the Code of Virginia. By having public participation guideline regulation in place prior to promulgating professional practice regulation the board can assure that procedures were followed allowing for public participation as set out in the Administrative Process Act (§ 2.2-4000 et. Seq.)

The Board expects this rulemaking to be non-controversial in that they have used as boilerplate public participation guideline regulations currently utilized by regulatory boards in the Commonwealth of Virginia. In that public participation should be consistent with requirements of the Administrative Process Act there is for the most part no mention of board specific requirements.

Further, these regulations will allow for the participation and oversight of the public in the rule making activities of the board. As such, the board believes that there will be no objections from the very people who would benefit from its existence.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Creation of the following regulatory sections are recommended:

Purpose.

A statement of the reason for these regulation along with a citation of the statutory authority providing for said regulation.

Definitions.

A listing of important words used throughout the regulation and the meaning of these words as they apply throughout the text.

Composition of notification lists.

Language will identify who will be notified of regulatory actions and how the public may be included on lists to be contacted.

Documents to be sent to persons on the notification lists.

Language will identify the notices to be sent and require that notices include instruction on how to obtain a copy of the regulation and any supporting documentation, either from the board office or from the Virginia Regulatory Townhall.

Petition for rulemaking.

Language will identify how any person may petition the board to develop a new regulation of amend existing regulation.

Notice of Intended Regulatory Action.

Language will identify when the board shall issue a notice of intended regulatory action, provide a rule regarding the indication of a public hearing in the NOIRA, and the holding of a public hearing in response to public request or Governor's directive.

Notice of Comment Period.

Language providing that prior to the 60-day comment period the board will issue a notice of comment period that allows for the acceptance of comments pertaining to the proposed regulations by regular mail, facsimile or electronic means.

Notice of meeting.

Language providing that a notice shall be posted electronically on the Virginia Townhall and transmitted to the Registrar of Regulations for inclusion in the Virginia Register of any meeting of the board at which any regulation action may take place.

Public hearings on regulations.

Language providing that the board shall conduct a public hearing during the 60-day comment following the publication of a proposed regulation or amendment to an existing regulation.

Periodic review of regulations.

Language providing that a review of regulations will occur at least two years regardless of whether instituted by the board or carried out as a result of an executive order of the Governor.

Appointment of committees.

Language providing that the board may appoint an ad hoc committee to assist in the review and development of the board.

Limitation of service.

Language specifying the timeframe duration of an ad hoc committee. More specifically, when an ad hoc committee appointed by the board may be dissolved.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

Regulations providing for public participation guidelines are requirements on the board in compliance with the Administrative Process Act. As such the primary disadvantage to all (public, Commonwealth, agency, and regulated community) concerned with the profession of towing and recovery is the current lack of these regulations. Likewise, the primary advantage of this proposed regulation is that it brings the board into compliance with the APA and allows a specified avenue for public participation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The requirements of these proposed regulation do not exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Any locality having an ordinance or regulation governing towing and recovery operations in its jurisdiction may be indirectly affected by these regulations in that it will give said jurisdiction an opportunity to comment on state requirements for the profession. However, nothing contained in these proposed regulation will obligate or require a locality to make comment to the board on any regulatory matter.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

For the most part, regulations providing public participation guidelines are requirements on the board in compliance with the Administrative Process Act. As such the boards choice of alternative regulatory methods were significantly limited. Further, any compliance or reporting requirements on small businesses adverse or otherwise because of these requirements of this regulation would negligible or non-existent.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The projected cost to the state (board) to implement and enforce the proposed regulation comes from the one time expense of printing and mailing copies of the regulation to future licensees. Per § 46.2-2809 of the Code of Virginia: “A copy of any regulation promulgated under this section shall be mailed to each licensee 30 days prior to its effective date.”</p> <p>Further, these regulation seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no anticipated or projected cost of this regulation to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>These regulation will affect operators of towing and recovery businesses, businesses and individuals using the services of towing and recovery business, and localities with specific rules and regulations pertaining to the towing and recovery industry.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than</p>	<p>In that licensure under this board as seek out in § 46.2-2828 of the Code of Virginia is not required until July 1, 2008 it is difficult to say exactly how many licensees of the board will be affected. However, it is the belief of the board that the number will be around 3,000. This number will</p>

<p>500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>include a large number of independently owned and operated small businesses. All of which will employ fewer than 500 full-time employees and have gross annual revenue of less than \$6 million.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no anticipated or projected costs of the regulation for affected individuals, businesses, or other entities.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

As stated under the Regulatory Flexibility Analysis section, for the most part, regulations providing public participation guidelines are requirements on the board in compliance with the Administrative Process Act. In proposing these regulation the board’s intent was to implement but not duplicate provisions of the APA. Currently in absence of these regulations the board has complied with APA requirements by posting meetings and minutes on Commonwealth Calendar.

In preparation of these regulations the board reviewed and utilized as models public participation guideline regulations of the boards of the Department of Health Professions (DHP). The 13 boards of DHP have consistent PPG regulatory language to allow for public participation in the regulatory aspects of each board. The PPG regulations of DHP boards set forth provisions for a mailing list to receive documents related to the promulgation of regulations, procedures to be followed in a petition for rulemaking, notices, public hearings and a periodic review of regulations. As well as establish provisions for advisory (ad hoc) committees in the development of regulations.

In doing so the Board for Towing and Recovery Operators feels that it has devised and proposed regulation that is least burdensome and/or intrusive to those interested in this profession while maintaining the essential purpose of PPG regulation. Most importantly, Public Participation Guideline Regulations that should result in little or no cost to small businesses in the Commonwealth of Virginia.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
None	24VAC27-10-10	None	<p>Purpose.</p> <p>The purpose of this chapter is to provide guidelines for the involvement of the public in the initial formation and development, amendment or repeal of regulations of the Board for Towing and Recovery Operators. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-20	None	<p>Definitions.</p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p>"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.</p> <p>"Board" means the Board for Towing and Recovery Operators.</p> <p>"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic lists maintained through the Virginia Regulatory Town Hall or lists maintained by the board.</p> <p>"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation,</p>

			<p>or any other legal entity.</p> <p>"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by the board in accordance with the authority conferred on it by applicable laws.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-30	None	<p>Composition of notification lists.</p> <p>A. The board shall maintain lists of persons who have requested to be notified of the initial formation, development, amendment or repeal of regulations.</p> <p>B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.</p> <p>C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.</p> <p>D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-40	None	<p>Documents to be sent to persons on the notification lists.</p> <p>A. Persons on the notification lists, as described in 24VAC27-10-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:</p> <ol style="list-style-type: none"> 1. A notice of intended regulatory action. 2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and

			<p>any supporting documents, either electronically or from the board office.</p> <p>3. A notice soliciting comment on a final regulation when the regulatory process has been extended.</p> <p>B. Notification of the adoption of a final regulation and copies of the regulation shall be posted on the board's website prior to the 30-day adoption period.</p> <p>C. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-50		<p>Petition for rulemaking.</p> <p>A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.</p> <p>B. A petition shall include but need not be limited to the following:</p> <ol style="list-style-type: none"> 1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition. 2. The number and title of the regulation to be addressed. 3. A description of the regulatory problem or need to be addressed. 4. A recommended addition, deletion, or amendment to the regulation. <p>C. The board shall receive, consider and respond to a petition within 180 days, and shall have the sole authority to dispose of the petition.</p> <p>D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-60	None	<p>Notice of Intended Regulatory Action.</p> <p>A. The board shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal</p>

			<p>of a regulation. The NOIRA shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.</p> <p>B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.</p> <p>C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons or if the Governor directs the board to hold a public hearing, such a hearing shall be scheduled.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-70	None	<p>Notice of Comment Period.</p> <p>A. Prior to the 60-day comment period, the board shall issue a notice of comment period (NOCP) whenever it propose to initiate, amend or repeal a regulation or amend an existing regulation under a fast-track process. The NOCP shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.</p> <p>B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.</p> <p>C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment shall not be accepted.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-80	None	<p>Notice of meeting.</p> <p>A. At any meeting of the board or advisory committee at which the formation, amendment, repeal, or adoption of a regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the Virginia Regulatory Town Hall and transmitted to the</p>

			<p>Registrar of Regulations for inclusion in the Virginia Register.</p> <p>B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under §2.2-4002 or §2.2-4011 of the Code of Virginia, the notice of meeting shall indicate that a copy of the proposed regulation may be requested from the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-90	None	<p>Public hearings on regulations.</p> <p>The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-100	None	<p>Periodic review of regulations.</p> <p>A. The board shall conduct a periodic review of its regulations consistent with an executive order issued by the Governor to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.</p> <p>B. Such review may be conducted separately or in conjunction with other meetings or hearings.</p> <p>C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the notification lists identified in 24VAC27-10-30.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-110	None	<p>Appointment of committees.</p> <p>A. The board may appoint an ad hoc committee whose responsibility shall be to assist in the review and development of regulations for the board.</p> <p>B. The board may appoint an ad hoc committee to provide professional specialization or technical assistance when the board determines that such expertise is</p>

			<p>necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.</p> <p><i>Creation of new regulation.</i></p>
None	24VAC27-10-120	None	<p>Limitation of service.</p> <p>A. An ad hoc committee which has been appointed by the board may be dissolved by the board when:</p> <ol style="list-style-type: none"> 1. There is no response to the Notice of Intended Regulatory Action, or 2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act. <p>B. An ad hoc committee shall remain in existence no longer than 18 months from its initial appointment unless the board determines that the specific regulatory need continues to exist beyond that time. The board may authorize the ad hoc committee to continue for an additional specified period of time to complete the task for which it was appointed.</p> <p><i>Creation of new regulation.</i></p>

Enter any other statement here